

CHAPTER 3

Evolution of Mission Hills into a Municipal Corporation: The Development Control Implications

This chapter is concerned with the evolution of Mission Hills from a private development, virtually unregulated by governmental entities, but strictly regulated by private covenants, to a municipal corporation with full public regulatory powers. The reason for this concern is that the transition from private to public restrictions represented in the period between 1949 (when the City was incorporated) and 1982 (when the City adopted its first comprehensive plan) represented an historic change in land use planning and regulation of Mission Hills. Further, the City's first plan, while based on the original design and planning principles described previously, was also set within contemporary socioeconomic concerns and issues of planning and land use policy at that time. Consequently, two major areas treated here are relevant to this transition: the characteristics of private controls operating in Mission Hills; and the development of municipal regulatory powers with the City of Mission Hills.

Characteristics of Private Controls

Before describing the characteristics and roles of private property restrictions and covenants in Mission Hills that pre-dated its plan, it is important to summarize the reasons and contexts for which they were originally applied. In brief, private restrictions were constructed because public land use restrictions were not in effect at the time of development, and thus any development at this time was constantly at risk regarding the probable transition of land from its original use, as well as it was vulnerable to intrusion of new development which could be (and often was) incompatible with both the use and the design configuration of structures of that use.

Although J. C. Nichols was not the first developer in Kansas City to apply deed restrictions and private covenants in residential development, his application of this approach was perhaps without equal in its comprehensiveness. The underlying purpose of his efforts was to insure that the happenstance of developmental trends of the day did not occur in his projects. Remarking on this purpose in 1921, J. C. Nichols suggested:

Our whole aim is to stabilize this district, to fix it so distinctly as a good home community that people can buy or build here with the assurance that a home here will be worth a little more each year...¹

Had zoning been in existence at the time that Mission Hills was developed, it most assuredly would have been used by Nichols; he was a strong supporter of the concept. Commenting on zoning in 1926, the very year that the U. S. Supreme Court upheld the constitutionality of zoning, Nichols wrote:

Zoning is the greatest boon known to a city today, in fact, the greatest protection to city life. It affects equally the protection of the rights of air, light and sunshine, and

decent surroundings for the small cottage as well as the large residential estates of a community. It is just as vital to the protection of the investor in a small outlying business lot as it is to the owner of a great building in the down-town business district. It sets aside and reserves, for industrial, railway, and manufacturing uses, land for the city's normal development, just as much as it serves the areas properly belonging to future residential development. It puts order instead of chaos into American city building.²

Dimensions of Restrictive Covenants

Private restrictions in Mission Hills were accomplished in three major ways: restrictions placed separately in each recorded deed; blanket restrictions covering large areas and subdivisions as a whole; and the creation of enforcement mechanisms through the formation of home corporations and associations. The first two, lot and large area restrictions, can be seen in the "Master List" of restrictions published by J. C. Nichols in November, 1922, for the entire Country Club District.³ These two types of restrictions were interrelated and reinforcing. The separate deed restrictions which were applied to specific lots also incorporated references to blanket restrictions and thus bound the individual lot to the restrictions and provisions of the larger block or subdivision in which the lot was situated.⁴ Individual deeds, in addition to tying the property to "declarations" covering larger areas, would typically restrict the property along the following dimensions:

- i. limited building height, often to one and one-half stories;
- ii. required a minimum of enclosed floor area, e.g. 2,000 square feet;
- iii. designated the street on which the house was to be fronted;
- iv. stipulated minimum front, rear, and side yard setbacks;
- v. limited the use to one dwelling unit regardless of the number of platted lots conveyed in a given deed;
- vi. constrained the construction of outbuildings, storage tanks, dams, and bridges and the maintenance of livestock to the consent of the J. C. Nichols Company;
- vii. provided the J. C. Nichols Company the power to modify or release any of the dimensional restrictions.

In almost every respect, these private land restrictions are generically similar to those found in modern city, zoning ordinances. However, in contrast to zoning ordinances, for each lot or groups of lots conveyed, the specific value, frontage, setbacks, and other dimensional restrictions would be developed individually, based on the configuration, orientation and site characteristics of the respective lot. Thus, each dimensional requirement could (and often does) vary widely, even among lots fronting on the same street and within the same block. Again, the diversity and variability of lot sizes which were part of the basic physical design plan were reinforced in an almost permanent way

by the use of these private restrictions.

Similarly, the objective of the larger area wide restrictions of Mission Hills dictated a related pattern. For example, the purpose of the area restrictions as recorded for the Mission Hills subdivisions on July 21, 1914 was stated as follows:

Purpose: ... all of the parties to this agreement are desirous of building up a first class and permanent neighborhood, possessing more than ordinary attractions with improvements of the most desirable character, and are desirous of providing means for such improvements and utilities for common use as are necessary or desirable in a first class residence neighborhood, and to provide a means for paying for such utilities and improvements....⁵

This Declaration which would be extended to virtually all areas of the City of Mission Hills as it exists today treated five major areas of concern. First, provision was made for the conveyance of easements for sewer rights-of-way to Kansas City, Missouri in as much as the northern portion of Mission Hills was (and is) served by this Missouri system. Second, a series of building restrictions were detailed which included the following elements: (1) the use of lots - private residence, excluding "flats" or apartments, designed for single family occupancy; (2) cost of residence - residences to cost no less than \$5,000;⁶ restrictions on projections - windows, vestibules, porches, etc.; and (4) restrictions on "outbuildings." The third element of the blanket restrictions provided for the prohibition of billboards. Vacation of streets, a fourth element, was provided such that ownership would revert to fronting owners with rights to relocate, close, or convey streets retained by the J. C. Nichols Companies. Finally, provision was made for the creation of a homes corporation to assume many responsibilities for the provision of services, responsibilities not dissimilar from those assumed by municipal corporations. This latter mechanism is described below. Combined, however, both the individual deed restrictions and the blanket restrictions provided for effectively similar controls as do typical zoning codes today, however, as will be seen, with very different physical form and procedural results. It should be noted as well that the above description of area restrictions emanates from those which were applied originally in the first eight blocks of the Mission Hills Subdivision. However, as the development expanded, each area and block of the City was brought within the purview of these or other similar blanket restrictions.⁷ These restrictions also applied to the open space areas of the golf courses.

With respect to the Mission Hills Country Club, the following restrictions were recorded July 25, 1914 which address the possible future abandonment of the golf course use: (1) that the future use will be limited to private residences, with no "flats" or apartments permitted; (2) that minimum cost of units were to be established, e.g. \$4,000 - \$5,000; and (3) that other setback and property restrictions, similar to those listed in the Mission Hills Declaration were to apply to the area of the Mission Hills Country Club.⁸

The blanket restriction placed on the Kansas City Country Club differs substantially from those placed on Mission Hills. In the case of abandonment of club use, the blanket restrictions make reference to an option for the J. C. Nichols Companies to purchase the property.⁹ In the event that this option was not exercised, only that portion of the property within 300 feet of the boundaries (except the westerly boundary of which this

distance is set at 200 feet), would be subject to the restrictions of the adjacent lands.¹⁰ Consequently, unless the individual deed provides for more stringent conditions, use of the interior portion of the property should be regarded as unrestricted as to use.

Finally, the master list of restrictions does not make specific reference to the Indian Hills Country Club. However, those blanket restrictions covering the larger Indian Hills Subdivision generally restrict the use of land to single family residential use, with dimensional requirements generally similar to those expressed in connection with the Mission Hills Subdivisions.

In summary, the three golf courses in Mission Hills appear varied in their restrictions. Whereas the Mission Hills course appears completely restricted to single family residential use in the event of the abandonment of the current use, the Kansas City course appears to hold both purchase option implications and single family residential use restrictions in the buffer or exterior boundary areas only. Finally, the future potential use of the Indian Hills course is less certain due to the apparent absence of specific blanket restrictions.

It is important to note further three additional dimensions of the private restrictions; these pertain to the period of time for which the restrictions are applicable, the procedures for the enforcement of the restrictions, and the relationship between private restrictions and public law. Typically, the length of time for the coverage of the restrictions, both for individual deeds, as well as area restrictions, is articulated as follows:

Period of Restrictions - Extension of Restrictions - All of the building restrictions...shall be binding upon the parties of this agreement and their respective heirs, successors and assigns, for a period of twenty-five (25) years from June 1, 1914, and shall automatically be continued thereafter for periods of twenty (20) years each, unless at least five (5) years prior to the expiration of this first twenty-five (25) year period or any subsequent twenty (20) year period, the owners of a majority of the net acreage of the land hereby restricted...shall execute and acknowledge an agreement... releasing the land from any or all of the above restrictions as to all of the land hereby restricted....¹¹

In addition to this clause, a specific provision is made that all of the agreements and provisions pertaining to these restrictions "shall be deemed to be covenants running with the land" and thus binding on all subsequent heirs, successors, or assigns.¹² According to current information available to the City, no blanket terminations have been achieved to the date, although, as previously noted, the J. C. Nichols Company holds certain rights relative to the modification, adjustment, or variance of certain dimensional and substantive restrictions.

In terms of the enforcement of restrictions, the following procedures are provided in the blanket restrictions, with similar steps prescribed in individual deeds:

To Enforce Building Restrictions - To enforce, either in his own name or any property owner or owners, as may be necessary, all building restrictions which have been, are now, or may be hereafter imposed upon any of the real estate in Mission Hills by the J. C. Nichols Realty Company, unless the contract providing such restrictions shall be cancelled or modified by consent of the parties thereto.¹²

It will be noted below that these enforcement powers of the J. C. Nichols Company are delegated to the homes corporations and associations created by the Nichols Companies.

Finally, provision is made for future relationships between the restrictions and public law.

To Conform to Laws of Kansas - In the event that at any time hereafter any provision of this contract shall be found to be in conflict with the laws of Kansas as they now exist, or may hereafter exist, then such provision of this contract shall on that account be held to be invalid; the remaining part or parts of said contracts shall, nevertheless, remain in full force, virtue, and effect.¹³ Ibid., p. 91.

In this respect, clearly the early racial restrictions incorporated in both blanket and individual restrictions are invalid by virtue of both state and federal law. The U.S. Supreme Court, in **Shelly vs. Kramer** in 1947, ruled that restrictions based on race were directly in violation of the 14th amendment of the Constitution.

In summary, the private restrictions put in place by J. C. Nichols were done by the necessity to insulate the development from otherwise uncontrollable and deleterious effects of private market initiatives. Zoning, an alternative to such restrictions, was not available at the time of the development of Mission Hills. The system of private restrictions put in place by J. C. Nichols as early as 1914 are, with the exception of racially restrictive covenants, largely in force today. This system includes individual, lot-specific restrictions, larger block and subdivision restrictions, procedures for their automatic continuance, as well as specific mechanisms for their enforcement. Although applicable to the entire area of Mission Hills, the major open space areas, the golf courses, are subject to less stringent requirements. Whereas the Mission Hills course, in the case of abandonment, is restricted to single family use, the future use under a similar prospect is much less certain for the other two courses. It is largely in the above context of private property restrictions that contemporary land use regulation must be considered. However, before proceeding to these current developments, it is important to give attention to the mechanisms put in place by the J. C. Nichols Companies in anticipation of municipal incorporation.

Homes Associations and Corporations

As mentioned in the previous chapter, J. C. Nichols, in the absence of municipal incorporation, provided for the maintenance of development standards and the delivery of community services through the formulation of home corporations or home associations. Established through private property covenants, the powers of these associations were closely symmetrical to those of modern municipalities. For example, listed below are the powers invested in the Mission Hills Homes Corporation in 1914:

1. to maintain vacant property;
2. to acquire, construct, maintain and repair sewers;
3. to provide and maintain lighting for streets, parks, parkings, pedestrian ways, ornamental entrances, and other common areas;
4. to issue permits for street cuts and excavation and to accept bonds or deposits for their repair;
5. to repair, oil, maintain, and reconstruct streets including street cleaning and snow removal services;
6. to care for, trim, protect, and replant trees along all streets, parkways, and parks;
7. to provide for the maintenance of gateways, entrances, tennis courts, and playgrounds;
8. to enforce all building restrictions;
9. to erect and maintain adequate signs;
10. to pay taxes and assessment that may be levied on streets, parks, and street intersections and other general use areas;
11. to provide means for furnishing water, gas, electricity; to purchase same from other cities, corporations, or private individuals; to erect poles and wires over and along any street;
12. to provide means for fire protection.¹⁴

To provide the resources for these services, the Mission Hills Declaration allowed for the levying of an annual improvement assessment. As originally provided in Mission Hills, this tax was limited to one mill per square foot of accessible land with a maximum limit of two mills per square foot, provided a 2/3 vote of the Corporation.¹⁵ This limit would ultimately result in difficulty for the Corporation to provide the enabled services. J. C. Nichols, in providing advice to national land developers in 1947, stated:

In our early charters we made the serious mistake of limiting the total tax per square foot, and some associations cannot levy over a mill per square foot under their charters. Others have the right by a vote of the majority of the owners attending the meeting...to raise it to a total not to exceed two mills. With our present day high costs, the associations with the limitation are in grave difficulty, and, several of them are trying to meet the situation by asking for voluntary additional annual contributions to the homes association. This results in a few of the owners refusing to pay...¹⁶

The two homes associations formed in the early period of the development of Mission

Hills constituted the Mission Hills Homes Company (Association) formed in August, 1914 and the Indian Hills Homes Company (Association) created in April, 1925.¹⁷ Much later the Tomahawk Road Homes Association was created, thus providing almost total coverage of the present jurisdiction of the City of Mission Hills. (See Figure 8).

Described nationally as "outstandingly successful" examples, these associations would act as surrogate municipalities for the Mission Hills development for several decades.¹⁸ Yet, these associations were strongly related to the guidance of the J. C. Nichols Company. Nichols, noting their value, but also illustrating the investment company's influence of them, stated in 1947:

We made the mistake in not setting up homes associations in our properties in the Country Club District at the very beginning, with the power to assess 'land' for neighborhood service. We now have 19 such associations under one common staff, and every lot is sold subject to a land assessment for such associations... These associations create neighborhood responsibility through the years, supply many needs and services, and go far to maintain values... Be sure to give your homes associations broad powers to meet all future and changing needs.¹⁹

However, the limitations to association land assessment, the growth of the development, and indeed the "changing needs" which Nichols had alluded to, converged to necessitate a formal incorporation of the City of Mission Hills as the successor to the homes corporations.

The Evolution Public Land Use Controls

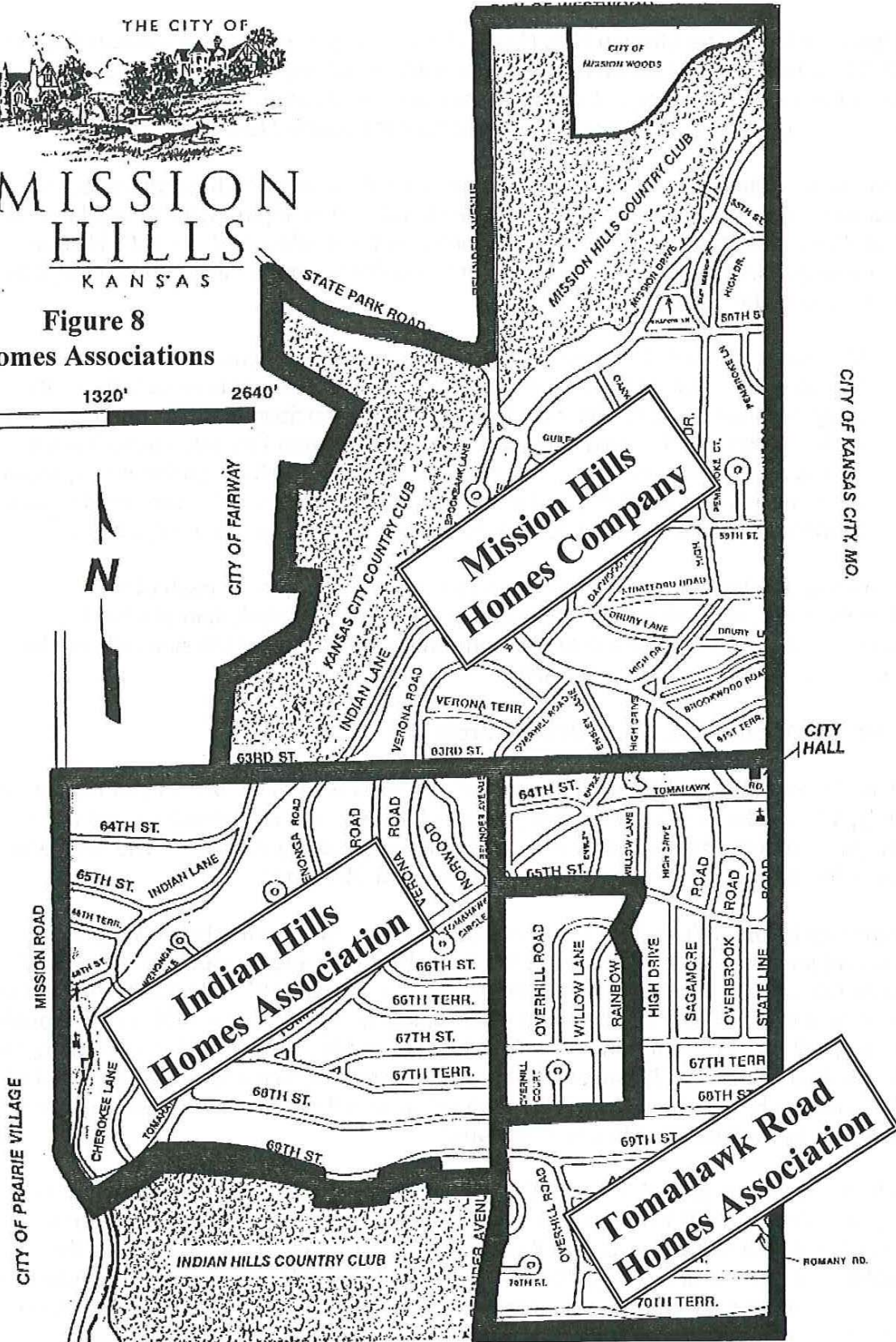
The City of Mission Hills was formally incorporated as a third class city of Kansas in July, 1949. The population of that portion of the Mission Hills development which was originally incorporated amounted to approximately 2,500 persons.²⁰ The land area of the City, as shown in Figure 9, included just over 300 acres.

Since its incorporation, however, several annexations were made resulting in the current jurisdictional boundaries of the City. However, these additions to the City's land area occurred in two major time periods: 1951 and 1956-1957. In 1951, the largest annexation of the City's history occurred, which incorporated the Indian Hills Country Club (130 acres) and the Indian Hills subdivisions (343 acres). This annexation, as transpired when the City subsumed through incorporation many of the responsibilities of the Mission Hills Homes Company, also subsumed those services previously provided through the Indian Hills Homes Company.²¹

The second time period, 1956-1957, witnessed the addition of land area only slightly smaller than the 1951 annexation. These annexations included the addition of the Mission Hills and Kansas City golf courses, as well as other subdivisions in the southeast section of the City. By 1960, the City's boundaries as they exist today were established, with no further expansion possible. The City is currently bounded on all sides by the following municipal jurisdictions: Kansas City, Missouri (east), Westwood (north), Fairway and Prairie Village (west) with Prairie Village also bounding the south. It is within this jurisdictional framework that the City's powers and services have existed for the past 50 years. Within this framework, as well, three major changes



Figure 8
Homes Associations





and Annexation
1320' 2640'



occurred with this transition of Mission Hills from a private development to a local government status: (1) the transition of service responsibilities from the home corporations to the municipality; (2) the effective broadening of the tax and revenue base to accommodate service provision; and (3) the transition from private land restrictions to public land use controls.

The initiation of public land use controls was first attempted in Mission Hills in 1950. This was done in the form of a zoning ordinance proposal. However, after considerable deliberation, this particular ordinance was not passed by the City Council and an approved zoning code did not occur until May, 1952.²² A revised ordinance was approved in November, 1954, and further major amendments were made in July, 1960 and again in February, 1969. Without detailing the character of these ordinances, the City's original zoning code included two major types of residential zones, in addition to a country club golf course zone.²³ However, the original comprehensive plan noted in 1981:

...economic and demographic changes... in the city over the past ten years have focused increasing attention on the adequacy of the City's current land development control policy in either directing the City's development policy or insuring the continuance of the design and planning integrity of the original development plan. Put differently, the critical problem facing the City today is the maintenance of the integrity of the historical design of Mission Hills within a public policy framework which is respectful and sensitive to changing socioeconomic realities of Mission Hills.²⁴

In an attempt to maintain the integrity of the historical design, the City Council in 1978 adopted a zoning ordinance (Ordinance 584) that in addition to changing some zoning districts also created the Architectural Review Board (ARB). The ordinance required that all applications for building permits be approved by the ARB. The first application to the board was found to be unacceptable and changes to the plan were required to protect open green space.

The original Comprehensive Plan also emphasized the important difference between private and public controls. Specifically, it made the point that while private restrictions are **lot-specific**, and thus yielding heterogeneity and diversity in physical form results, zoning tends to be **area-specific**, thus seeking homogeneity or uniformity among the lots in the same zone. It also suggested that in a buyer/seller market, private restrictions are agreed to by the choice to purchase, regardless of favored or unequal treatment with respect to adjoining properties. Zoning, on the other hand, as public policy, must seek equal protection objectives. An example of the legitimate favoring of one lot in a particular zone would be the issuance of a variance to the code on the basis of hardship created by the configuration or qualities of a specific site. An example of an illegitimate favoring of a lot in a similar situation would be the exercise of "spot zoning" where one property owner is singled out and is arbitrarily, if not capriciously, benefited over all others. The plan also noted that while private restrictions "run with the land" and are thus relatively difficult to modify, zoning is changeable as public needs and interests change.

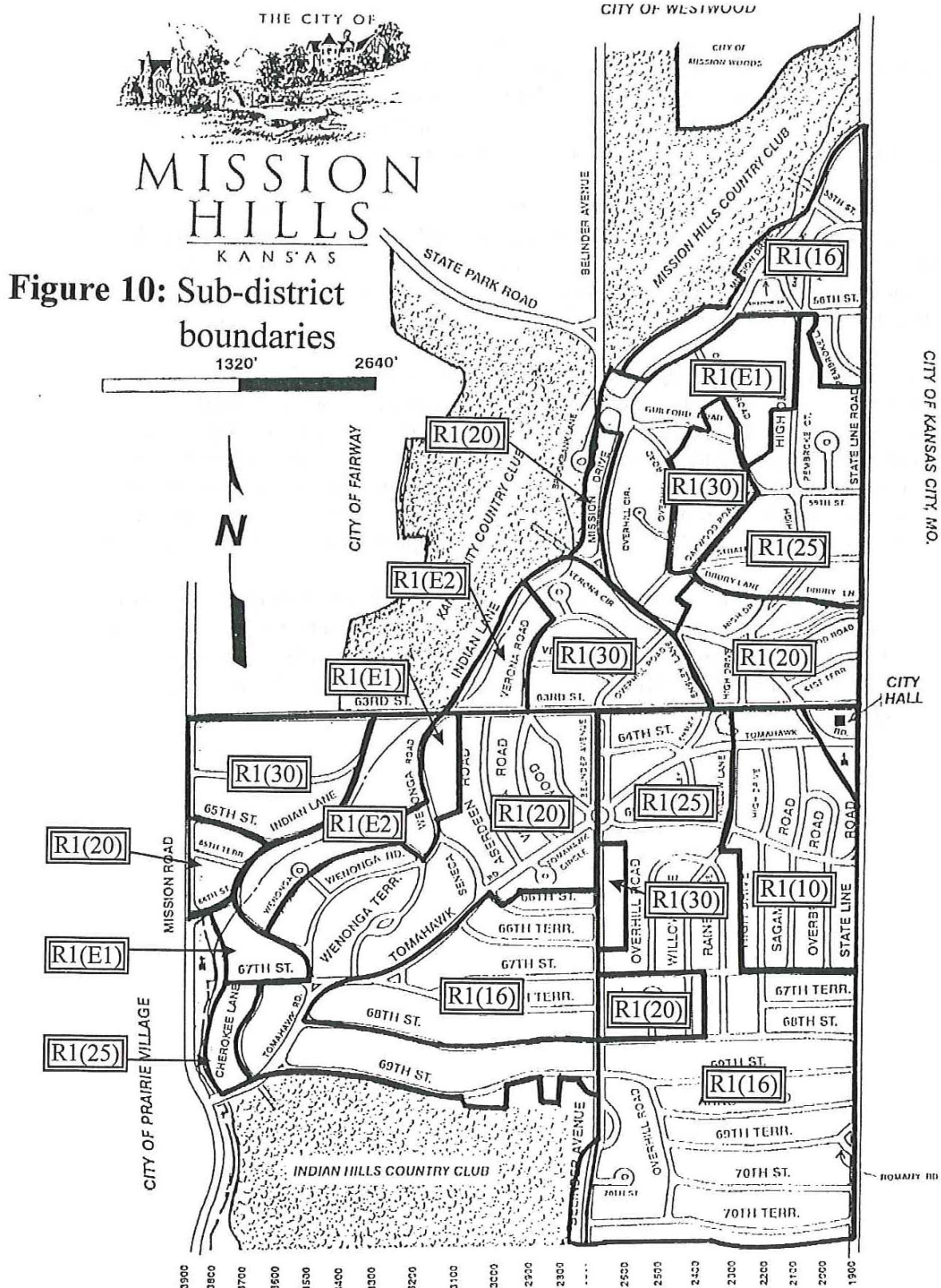
Another major difference outlined in the plan was in the enforcement of restrictions. While private restrictions are enforceable by only selected and affected parties, zoning as a legislative process allows for a broader definition of interests and affected parties. Finally, the plan noted that while private restrictions can be framed in specific detail concerning land use and building construction characteristics, zoning generally tends to limit itself only to general site concerns of use, setbacks, building heights, and other related characteristics.

Most importantly, the original plan stated that the resolution of these polar characteristics within a municipal development policy position represented an important challenge to the City. This issue was critical due to the fact the planning and design, as well as its output in environmental quality which exists in Mission Hills is the result not of zoning, but private restrictions. Further, the plan noted:

...the question of whether such environmental quality can be sustained over the next twenty years is perhaps more influenced by the public policy and public regulations which the City of Mission Hills adopts, than it is the sole reliance on private covenants. It is the reconciliation of these quite divergent conditions which lies at the heart of this comprehensive plan.²⁵

Based on this plan, the City adopted a wholesale revision of its zoning ordinance in 1983 to link the diverse design of the city's blocks and neighborhoods based on private restrictions to zoning requirements. While the land use districts remained the same (residential, church and public buildings, and the restricted golf course district), the residential district was subdivided into seven subdistricts (with minimum lot sizes of 10,000, 16,000, 20,000, 25,000, 30,000 square feet, 1 acre and 2 acres,) versus the two subdistricts (of 10,000 and 16,000 square feet) adopted in 1951. (See Figure 10).

Since City's adoption of this wholesale revision of its code, it has continued to revise and update its comprehensive plan and its zoning code as will be discussed further in Chapter 6. Each plan update, however, has focused on the changing socio-economic character of the city.



NOTES

- ¹ A. B. McDonald, "A Homes District Beautiful", *Ladies Home Journal*, February, 1921, pp. 12-13ff.
- ² J. C. Nichols, "The Planning and Control of Outlying Shopping Centers", *Journal of Land Public Utility Economics*, Vol. 2, (1926), p. 19.
- ³ Master list of property restrictions published by J. C. Nichols Investment Company, November, 1922. (untitled)
- ⁴ Interview with J. C. Nichols Company, June 20, 1980.
- ⁵ *Op. Cit.*, master list, p. 85, "Mission Hills - Declaration of Restrictive Covenants", July 21, 1914.
- ⁶ Minimum cost restrictions vary significantly in Mission Hills. The Nichols Company would vary these even within blocks, dependent on the specific physical and design characteristics of the lot or site in question. As would be expected, these minimum cost restrictions tend to increase with later dates of recordation.
- ⁷ As blocks were platted, the restrictions were simultaneously applied on a blanket basis. For example, in 1920, Mission Hills Blocks 8, 9, and 10 were brought into the blanket restrictions, whereas Blocks 20 - 23 were brought in in March, 1926.
- ⁸ *Op. Cit.*, master list, p. 103, "Section of Lease Between J.C. Nichols Realty Company and Mission Hills Country Club," July 25, 1914.
- ⁹ *Op. Cit.*, master list, p. 105, "Article 7 of the Contract Between J. C. Nichols and Kansas City Country Club", July 16, 1921. Further inspection of the actual deed is necessary in order to fully circumscribe these contractual restrictions.
- ¹⁰ See master list, p. 102, "Section of Lease Between Philip Reinhardt and J. C. Nichols", April 24, 1919.
- ¹¹ *Op. Cit.*, master list, p. 87. "Mission Hills Declarations.." Similar language is incorporated in individual deeds and in other blanket declarations in other subdivisions in Mission Hills.
- ¹² *Ibid.*, p. 89.
- ¹³ *Ibid.*, p. 91
- ¹⁴ *Ibid.*, pp. 88 - 89.
- ¹⁵ *Ibid.*
- ¹⁶ Community Builders Council, *The Community Builders Handbook*, Washington, D. C.: Urban Land Institute, 1947), p. 109.

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17. *Op. Cit.*, master list, p. 92 - 93. "Mission Hills - Declarations..." and, pp. 302 - 305, "Declaration of Restrictions Affecting Indian Hills," April, 1925.
 18. *Op. Cit.*, *Community Builder's Handbook*, p. 108.
 19. *Ibid.*, pp. 112 - 113.
 20. City of Mission Hills, *Facts About the City of Mission Hills*, November, 1976, p. 2.
 21. City of Mission Hills, Ordinances 51, 53 and 76.
 22. City of Mission Hills, Ordinance 62, May, 1952.
 23. City of Mission Hills, Ordinances 115, 244, 396.
 24. Thomas D. Galloway, *Comprehensive Plan and Development Guide for the City of Mission Hills, Kansas* (Mission Hills: City of Mission Hills, June, 1981), 3-17.
 25. *Ibid.*, 3-19.